

# **EXHIBIT 24**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

Orly Genger,

Chapter 7

CASE NO. 19-13895 (JLG)

Debtor.

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ORAL DEPOSITION OF MICHAEL OLDNER

June 25, 2020

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BUSHMAN COURT REPORTING  
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Also present: Sagi Genger

1 Trust.

2 I join in what Mr. Cullen said. We  
3 are here in an effort to, in a good faith  
4 effort here.

5 As I mentioned when I spoke with  
6 everybody last week, we do -- we appear  
7 without prejudice and without waiver of the  
8 pending Motion to Quash.

9 I trust that consistent with the  
10 judge's direction on the teleconference  
11 that was on Tuesday we will be able to have  
12 a successful deposition and hopefully avoid  
13 further motion practice on that matter.

14 MR. BOWEN: Well, let's go on the  
15 record and swear in the witness, please.

16 MICHAEL OLDNER,  
17 the witness hereinbefore named, having first been  
18 duly cautioned and sworn or affirmed to tell the  
19 truth, the whole truth and nothing but the truth,  
20 testified as follows:

21 MR. BOWEN: As I stated off the  
22 record, my name is Michael Bowen,  
23 B-o-w-e-n. I'm a lawyer from the law firm  
24 Kasowitz Benson Torres, a creditor in this  
25 bankruptcy, and I'll be asking you

1 the entity Claims Pursue.

2 And, on top of that, he won't -- he  
3 has not even identified who he is  
4 representing in this questioning, and it  
5 appears that, in effect, he is representing  
6 the interest of the Claims Pursue entity.

7 And I've asked him to clarify who he  
8 is representing in this proceeding during  
9 the deposition, during which he is asking  
10 the questions.

11 BY MR. BOWEN:

12 Q. Go ahead, Mr. Oldner. Let me, I think for the  
13 third time I'll restate the question. And, again,  
14 I'm just asking you to clarify. If I misstate it,  
15 just correct it.

16 MR. POLLOCK: Mr. Bowen --

17 Q. I understood you to say that you did not  
18 conduct any investigation of Dalia Genger before you  
19 signed a release as the successor trustee releasing  
20 any claims the trust may or may not have against  
21 Dalia Genger; is that correct?

22 MR. POLLOCK: Objection;  
23 mischaracterizes his testimony.

24 Q. You can answer it. Am I right or wrong?

25 A. I did not conduct any investigation into Dalia

1 Genger before I signed the release.

2 Q. Now the 8.9 or 9 million dollar debt that the  
3 trust has, you, you understand that's connected to  
4 something called the D&K note; correct?

5 A. Yes, sir.

6 Q. And do you, do you know that Dalia -- well, let  
7 me ask it this way. At the time that you decided to  
8 be the successor trustee were you aware of the fact  
9 that Dalia Genger had purported to transfer that note  
10 and, and incur debt on behalf of the trust that was  
11 disallowed by the Court?

12 MR. DELLAPORTAS: Object to form. It  
13 misstates the record.

14 MR. POLLOCK: I join in that  
15 objection.

16 MR. DELLAPORTAS: It's just not true.

17 A. Could you, could you point me to what you're  
18 talking about?

19 Q. Well, were you aware that there was any  
20 transaction involving the D&K note that Dalia Genger  
21 was involved in?

22 A. Not at all.

23 Q. You have no knowledge of that at all?

24 A. I had no knowledge whenever I accepted the  
25 position.

1 A. It's beneficiaries, plural.

2 Q. Okay. Well, we -- you know that one  
3 beneficiary is Orly Genger; correct?

4 A. Yes. One beneficiary is Orly Genger. The  
5 other beneficiary is her daughter. The other  
6 beneficiary is future generations.

7 Q. Okay.

8 A. I want to make sure we're on the same page.

9 Q. Right. Well, that, that's helpful that that's  
10 part of your understanding as the trustee.

11 A. Yes.

12 Q. So you have to keep in mind not just the  
13 interest of Orly Genger but the interests of her  
14 descendents; right?

15 A. Yes, sir. Yes, sir.

16 Q. And right now the trust has no assets, other  
17 than the two legal claims you mentioned, and it has a  
18 multimillion dollar debt; right?

19 A. Yes, sir.

20 Q. Okay.

21 A. Yes, sir. It has multimillion dollar claims  
22 and a multimillion dollar debt.

23 Q. Okay. Now before, before I go on to the topic  
24 of the Motion to Dismiss I just want to clarify on  
25 the release, that was a document that Sagi Genger



1 brought to you in Arkansas on the day that you signed  
2 the acceptance of the position; is that right?

3 A. I believe that to be true.

4 Q. So he had two documents; right? He had the  
5 document where you accepted the position, and he had  
6 a separate document, which was the release of Dalia  
7 Genger. Is that right?

8 A. I'm thinking. Yes, he had those two documents  
9 for sure.

10 Q. Okay. And your testimony, though, earlier was  
11 you don't think he had any other documents with him,  
12 and he didn't show you anything else; is that right?

13 A. No, sir. That was not my testimony.

14 Q. Okay. What, what else did he have with him,  
15 and what else did he show you?

16 A. The Inter-Creditor Agreement you brought up.

17 Q. That, that was brought up on the very day that  
18 you accepted the position?

19 A. Yes.

20 Q. Okay. But you didn't sign that until sometime  
21 over the weekend; is that right?

22 A. Yes, sir.

23 Q. Why -- what was the delay in signing that?

24 A. Are you asking what I'm thinking, what I was  
25 thinking when I did that?

1 record.

2 Q. Is that correct?

3 A. Will you ask that again, please?

4 Q. Now that the case is in bankruptcy court in New  
5 York, you have made the determination that it's no  
6 longer in the best interest of Orly Genger and her  
7 descendants as the beneficiaries of the trust that  
8 the bankruptcy be dismissed?

9 MR. POLLOCK: Objection; misstates the  
10 record, and, again, purely calls for  
11 privileged communications.

12 You've asked this repeatedly, and I've  
13 asked you repeatedly to stop calling for  
14 privileged communication.

15 At this point you're just harassing  
16 the witness by asking the same questions  
17 again and again. I respectfully ask you,  
18 Mr. Bowen, to move on.

19 Q. Is that correct, Mr. Oldner, that you now made  
20 the determination that it's no longer in the best  
21 interest of the beneficiaries of the trust to seek  
22 dismissal of the bankruptcy?

23 MR. POLLOCK: Same objection.

24 A. Your characterization is not correct, sir.

25 Q. Well, how is it not correct?

1 A. The trust at this time is not taking a position  
2 one way or the other through the Motion to Dismiss in  
3 New York.

4 Q. Well, in your mind, you personally, as the  
5 trustee, is it still your position that it's in the  
6 best interest of Orly Genger and her descendants as  
7 beneficiaries of the trust that the bankruptcy be  
8 dismissed?

9 MR. POLLOCK: Mr. Bowen, why do you  
10 still keep asking and questioning and  
11 questioning again and again? You're just  
12 harassing the witness. He has given you  
13 his answer. Move along.

14 BY MR. BOWEN:

15 Q. You can answer, Mr. Oldner.

16 MR. POLLOCK: He already gave you his  
17 answer.

18 Q. You can answer the question.

19 MR. POLLOCK: He did.

20 A. My position --

21 Q. Go ahead.

22 A. -- right now is that the trust will take no  
23 position right now in the Motion to Dismiss in New  
24 York.

25 Q. So you have made no conclusion as the trustee

1 A. Will you post the Inter-Creditor Agreement  
2 again while we're talking about it?

3 Q. Yes, yes.

4 A. Thank you. I think that puts me over on the  
5 side bar to talk.

6 Q. Yes.

7 A. Okay. There we are.

8 Q. Okay. So if you look at paragraph two on page  
9 two, there's a Distribution of Litigation Recovery,  
10 and it describes how the money goes first to Robin  
11 Rodriguez's company, and to Sagi Genger.

12 And then -- and, secondly, it goes to those  
13 two parties again, and, lastly, it goes to recovery.  
14 Do you see that?

15 A. I do.

16 Q. Okay. And you understood that; right? You  
17 understood that the \$32 million, if the trust won and  
18 got all of the \$32 million into the trust, it would  
19 have to divide up that money according to this  
20 paragraph; correct?

21 A. No, sir, not correct.

22 Q. What's incorrect about that?

23 A. Pretty much all of what you said.

24 Q. Okay. Well, then, if you're saying if the  
25 trust wins on the claim, and the \$32 million gets

1 paid into the trust, the trust gets to keep that  
2 money?

3 A. Well, those are two opposite ends, but, no, I'm  
4 not saying that either. The trust -- if REI wins,  
5 the trust will then receive money -- REI will pay its  
6 expenses.

7 The trust will then receive the money.  
8 Money will be paid out of REI as follows. Number  
9 one, it will retire the trust legitimate debts at  
10 that time.

11 And, obviously, we use the phrase "Proof of  
12 Claim." Obviously there has to be a Proof of Claim  
13 on everything if the trust, if the trust wins, just  
14 the same as it would be for anybody else.

15 The trust will not be handing money out on  
16 the street corner. This is our general agreement.  
17 Our general agreement is that the D&K note will be  
18 paid off.

19 Q. Well, that would include the payment in  
20 paragraph two to MSM; right?

21 A. That would be the D&K note, yes.

22 Q. Right. And then Sagi Genger gets his payment?

23 A. Depending on what that payment is, yes.

24 Q. Well, it's defined in this agreement, and  
25 you'll see that, if you look at the "where as"

1 one more time, I will answer that question.

2 Q. How did you understand what this agreement  
3 requires of the trust if the trust is awarded the  
4 \$32.3 that it claims belongs to it?

5 MR. POLLOCK: Objection; seeks  
6 speculation.

7 A. Number one, I see that at some point in the  
8 future. And at some point in the future, parameters  
9 on everything not only likely will change, parameters  
10 will have changed.

11 So, consequently, I do not -- I look at  
12 this note as a guideline and as an indication -- this  
13 Inter-Creditor Agreement is an indication that we are  
14 not going to fight with each other over the money.

15 It is, it is my anticipation that the trust  
16 will be able to satisfy, to pay its expenses, to  
17 satisfy its legitimate creditors, and that the trust  
18 will have money after that for its beneficiaries, not  
19 only Orly Genger, but Orly Genger's descendants going  
20 into the future.

21 Q. So your understanding is this agreement doesn't  
22 bind the trust to pay any particular amount to  
23 anybody else; is that correct?

24 MR. DELLAPORTAS: Objection; misstates  
25 the prior testimony.

1 MR. POLLOCK: Objection.

2 Q. Is that correct?

3 A. My understanding, my understanding is that this  
4 agreement provides a general outline, but in the real  
5 world things change. I do understand --

6 Q. So you expect to renegotiate the agreement?

7 A. Mr. Bowen, I, I would be derelict in my  
8 fiduciary responsibility if I don't try to  
9 renegotiate some portions.

10 Q. Do you understand that Sagi Genger is adverse  
11 to Orly Genger, who is the beneficiary, or one of the  
12 beneficiaries or the Orly Genger Trust?

13 MR. DELLAPORTAS: Objection; misstates  
14 the record.

15 MR. POLLOCK: Objection.

16 A. Can you tell me what "adverse" means in this  
17 case?

18 Q. That, that he's an opponent in the litigation  
19 between the two of them.

20 MR. DELLAPORTAS: Same objection.

21 A. I understand that Sagi Genger may be an  
22 opponent in the litigation, but I also understand  
23 that Sagi Genger would like to settle this litigation  
24 and get this behind him.

25 Q. And do you --

1 invitations.

2 BY MR. BOWEN:

3 Q. Mr. Oldner, in that -- under that  
4 Inter-Creditor Agreement -- we can put it back up if  
5 you want to see it. It's Exhibit 1 to your  
6 deposition.

7 A. I do.

8 Q. Does that agreement provide for payment of fees  
9 to you, or does that fall under the renegotiation  
10 that you intend to pursue?

11 MR. POLLOCK: Objection. Did you ask  
12 if there's a payment from you, Mr. Bowen,  
13 to Mr. Oldner?

14 Can we get the question read back from  
15 the stenographer?

16 MR. BOWEN: I'll restate it. Maybe  
17 you didn't hear it correctly.

18 BY MR. BOWEN:

19 Q. Mr. Oldner, the question is does the  
20 Inter-Creditor Agreement provide for payments to you  
21 in your capacity in operating Recovery Effort?

22 MR. DELLAPORTAS: Objection; the  
23 document speaks for itself.

24 A. The Inter-Creditor Agreement is solely an  
25 agreement between the parties -- Sagi, Robin



1 Rodriguez, the trust, REI -- not to fight with each  
2 other over the money. It has nothing whatsoever to  
3 do with my payment.

4 Q. And who, who did you expect was going to pay  
5 your fee when the time came to pay?

6 A. Recovery Effort Inc.

7 Q. And where was Recovery Effort Inc. going to get  
8 the money from the, whatever's left by, by virtue of  
9 the Inter-Creditor Agreement?

10 A. From whatever has been recovered.

11 Q. And would you get the remainder of that money,  
12 whatever's left to, that goes to Recovery; is that  
13 the idea?

14 MR. POLLOCK: Objection.

15 A. That's ludicrous.

16 Q. Then what's your thinking on that? What's the  
17 fee amount you get?

18 A. That's a ludicrous question. I actually take  
19 offense to that question. It's the first thing  
20 you've said that's offended me.

21 I'm going to get the -- so Robin is going  
22 to get paid. Sagi is going to get paid a bunch of  
23 money. The trust is going to be left with nothing?  
24 No, that's not true at all. Actually, I find that  
25 very offensive, that characterization.

